

DEPARTMENT OF STATE REVENUE

LETTER OF FINDINGS NUMBER: 02-0401P

Corporate Income Tax

For the Calendar Years 1997, 1998, 1999, 2000

NOTICE: Under IC 4-22-7-7, this document is required to be published in the Indiana Register and is effective on the date of publication. It shall remain in effect until the date it is superseded or deleted by the publication of a new document in the Indiana Register. The publication of this document will provide the general public with information about the Department's official position concerning a specific issue.

ISSUE

I. Tax Administration – Penalty

Authority: IC 6-8.1-10-2.1; 45 IAC 15-11-2

The taxpayer protests the penalty assessed.

STATEMENT OF FACTS

The taxpayer is a not-for-profit organization formed to sponsor several soccer teams for high school students and young adults. A departmental audit resulted in the assessment of additional gross income tax on proceeds from gaming activities. The taxpayer filed a letter of protest for each audited year requesting that the penalty be waived. The taxpayer asserts that the understatement of gaming income on its tax returns was not intentional. All gaming activities were conducted by volunteers.

DISCUSSION

Administrative Rule 45 IAC 15-11-2 (b) states the following:

“Negligence” on behalf of a taxpayer is defined as the failure to use such reasonable care, caution, or diligence as would be expected of an ordinary reasonable taxpayer. Negligence would result from a taxpayer's carelessness, thoughtlessness, disregard or inattention to duties placed upon the taxpayer by the Indiana Code or department regulations. Ignorance of the listed tax laws, rules and/or regulations is treated as negligence. Further, failure to read and follow instructions provided by the department is treated as negligence. Negligence shall be determined on a case by case basis according to the facts and circumstances of each taxpayer.

The unintentional omission of income from income tax returns falls within the definition of “negligence.” The intentional omission of income might have resulted in the imposition of the penalty for fraud.¹ Further, the assertion that the gaming activities were conducted by volunteers is irrelevant. The Department’s position on the matter of volunteers as opposed to compensated employees is set forth in its Charity Gaming Information publication: “An operator or a worker may not receive any compensation for conducting or assisting with any allowable (charity gaming) event.”²

A taxpayer’s total income is to be reported on its tax returns. The taxpayer has not established that its failure to timely pay the full amount of tax due was due to reasonable cause and not due to negligence.

FINDING

The taxpayer’s protest is denied.

CWH/RAW/JMS 021909

¹ The statutory imposition of the penalty for fraud may be found at IC 6-8.1-10-4.

² Charity Gaming Information, Publication 2, Revised June 1996, page 28.